

***United States Court of Appeals
for the Second Circuit***



**PETITION FOR
REHEARING**

76-1113

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

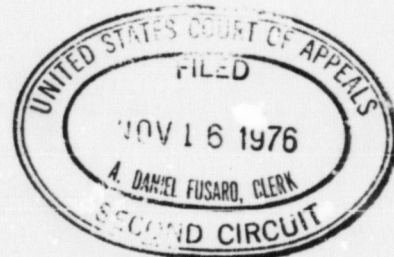
-against-

FRANCISCO ADRIANO ARMEDO-SARMIENTO, a/k/a Eduardo Sanchez, a/k/a Pacho el Mono, a/k/a Elkin, a/k/a Francisco Velez, EDGAR RESTREPO-BOTERO, a/k/a Omar Hernandez, a/k/a el Sobrino, a/k/a Edgar, LEON VELEZ, JORGE GONZALEZ, a/k/a Jorge Arbolede, LIBARDO GILL, a/k/a Ramiro Estrada, RUBEN DARI RODAN, CARMEN GILL, a/k/a Carmen Estrada-Restrepo, a/k/a Carmen Mazo, WILLIAM RODRIGUEZ-PARRA, a/k/a Jairo, OLEGARIO MONTES-GOMEZ,

Defendants-Appellants.

On Appeal from the United States
District Court for the Southern
District of New York.

PETITION FOR REHEARING FOR APPELLANT
WILLIAM RODRIGUEZ-PARRA



LEONARD J. LEVENSON
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Rodriguez-Parra
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THE COURT SHOULD HAVE GIVEN
DEFENDANT PARRA CREDIT FOR
TIME SERVED FROM THE DATE
OF HIS INDICTMENT IN MAY,
1974 UNTIL HIS SENTENCE IN
MARCH, 1976.

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QUESTION PRESENTED

THE COURT SHOULD HAVE GIVEN DEFENDANT
PARRA CREDIT FOR TIME SERVED FROM THE
DATE OF HIS INDICTMENT IN MAY, 1974
UNTIL HIS SENTENCE IN MARCH, 1976.

Preliminary Statement

This is a Petition for a rehearing under Rule 35 and Rule 40 of the Federal Rules of Appellate Procedure from an appeal argued before this Court on August 20, 1976 and decided on October 28, 1976. [Van Graafeiland, Gagliardi & Kelleher, J. J.]

Petition

Petitioner moves under Rule 40 for a rehearing with respect to the above appeal on the grounds that the Court has overlooked or misapprehended the thrust of one of petitioner's arguments with respect to improper sentencing of the appellant.

Appellant argued in the appealing brief that he should have received credit for all time served in jail from the date of his arrest in Texas in June of 1973 until the date of his sentence in March of 1976. Defendant had originally been sentenced to ten [10] years on his arrest in Texas for possession of cocaine. Subsequently, he was indicted and tried for conspiracy to import cocaine. One of the acts giving rise to the conspiracy charge stemmed from his original arrest in San Antonio, Texas. Appellant relies on 18 U.S.C. 3568 which makes mandatory, credit for time served "for any days spent in custody in connection with the offense or acts for which

sentence was imposed."

In his appeal, appellant urged two [2] main points: That the arrest in Texas fell within the scope of 18 U.S.C. 3568 and credit should be given from his original arrest. This Court disposed of that argument by citing Fontaine v. United States, 434 F.2d 1310 [1970].

The second contention of appellant was that if the court found that 3568 was inapplicable with respect to appellant's original arrest in Texas, that the Court at least determine at what date he began serving time for the conspiracy indictment. Appellant urges that the date of the indictment to wit, May of 1974 would be an appropriate date from which credit for his conspiracy indictment should begin. The Court in its opinion did not touch upon the second facet of petitioner's argument.^{1/}

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1. The entire portion of the opinion concerning the improper sentence of appellant's sentencing, is as follows:

"Following their conviction below, appellants Parra and Gomez were sentenced to ten years in prison. Relying upon 18 U.S.C. §3568, they contend that the District Court erroneously failed to give them credit for time already served as a result of their prior convictions in Texas. Because, as we have already observed, the convictions involved were for entirely separate crimes, we find §3568 to be inapplicable. See Fontaine v. United States, 434 F.2d 1310, 1311 [5th Cir. 1970]."

CONCLUSION

THE COURT SHOULD ORDER A REHEARING
OR AMEND ITS OPINION SO THAT IT
ADDRESSES PETITIONER'S SECOND CONTENTION.

Dated: New York, New York
November 10, 1976.

Respectfully submitted,

LEONARD J. LEVENSON, ESQ.
Attorney for William
Rodriguez-Parra

STATE OF NEW YORK)
) ES.:
COUNTY OF NEW YORK)

ESTELLE LAX, being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age and resides at Brooklyr, New York.

On November 11, 1976, deponent served the within Petition for Rehearing for Appellant William Rodriguez-Parra, upon Peter Block, Assistant United States Attorney, at the United States Attorney's Office, Southern District of New York, United States Courthouse Annex, One St. Andrews Plaza, New York, New York, by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Sworn to before me this

11th day of November, 1976.

Leonard J. Levenson

LEONARD J. LEVENSON
NOTARY PUBLIC, State of New York
No. 31 2323085 Qual. in New York County
Commission Expires March 30, 1977

Estelle Lax

ESTELLE LAX